



National Association of Business and Educational Radio

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June 29, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222 -- Mail Stop 1170
1919 M Street, N.W.
Washington, D.C. 20554

Re: Written Ex Parte Presentation In Gen.
Docket No. 90-314, ET Docket No. 92-100

Dear Mr. Caton:

Transmitted herewith on behalf of the National Association of Business and Educational Radio (NABER) and pursuant to Section 1.1206(a)(1) of the Commission's Rules, are two copies of a written ex parte communication submitted today to David R. Siddall, Chief of Frequency Allocation Branch, Office of Engineering and Technology regarding the above-referenced proceedings.

Please call me if you have any questions regarding this notice.

Respectfully submitted,


Robert L. Hoggarth
Assistant Director - Government Affairs

cc: Mr. David Siddall
Mr. Tom Mooring
Mr. Fred Thomas



National Association of Business and Educational Radio

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BY HAND

Mr. David R. Siddall, Chief
Frequency Allocation Branch
Office of Engineering and Technology
Federal Communications Commission
2025 M Street, N.W.
Room 7102 - Stop Code 1300A3
Washington, D.C. 20554

Re: Written Ex Parte Presentation In Gen.
Docket No. 90-314, ET Docket No. 92-100

Dear Mr. Siddall:

Pursuant to our meeting on June 22, 1994, this letter is submitted to supplement our discussions and to provide further clarification of several points expressed in the Petition For Reconsideration (hereinafter Petition) submitted by NABER in the referenced proceedings on April 25, 1994.

The purpose of the Petition was to express industry concerns regarding two major aspects of the rules related to response-only paging channels in the Memorandum Opinion & Order (MO&O) adopted February 3, 1994 in the referenced proceedings (Amendment of the Commission's Rules To Establish New Narrowband Personal Communications Services, 59 Fed. Reg. 14115, March 25, 1994). Specifically, those concerns involved (1) the requirement that an existing paging licensee have at least one constructed transmitter base station in a Major Trading Area (MTA) or Basic Trading Area (BTA) that was licensed prior to June 23, 1994, before the licensee would be eligible to apply for and bid on a response channel in that trading area, and (2) the decision to limit the total number of response channels for which a carrier could be licensed at any time to a total of two per trading area. The Petition did not challenge the MTA/BTA allocation scheme itself nor any other aspect of the Commission's decision.

As NABER explained in its Petition, the MTA/BTA allocation concept does not represent the way most existing paging companies design and operate their systems. Moreover, the eligibility requirement that a transmitter be located in a specific trading area would prevent legitimate paging operators from applying for and bidding on response channels in areas where they provide service but where, due to business or geographic reasons, their licensed transmitters are either on or beyond the border of a neighboring trading area. This would place many existing systems at a competitive disadvantage to new entrants who are eligible to buy 50 kHz paired

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systems outright. In its Petition, NABER proposed that the Commission reconsider eligibility for response channels based upon areas/regions that would be more-representative of the systems actually deployed by many paging carriers today. At our meeting we discussed a number of options including service area contours and mileage radius figures. After consultation with our membership, NABER has determined that the most efficient manner of determining eligibility is to allow existing carriers to apply for channels in those trading areas if they meet either of two alternate eligibility tests.

First, carriers who have received or are eligible for exclusive licenses from the Commission as of May 10, 1994 (the release date of the Third Report and Order in PP Docket No. 93-253) would be eligible to apply for response channels in all trading areas in which they are otherwise eligible to be licensed. For example, carriers recently recommended for exclusive licenses by NABER (929 MHz private carrier paging systems) or those already authorized exclusive nationwide licenses by the Commission (both 929 MHz PCP systems and 931 MHz common carrier paging systems) would be eligible to apply for response channels in any trading area in the country. Similarly situated regional or local exclusive carriers (on existing private or common carrier channels) would also be eligible to apply for and bid on trading areas covered by those grants. This exclusive service area eligibility requirement offers a fair test of a carrier's actual or planned service area and reflects an area that has been specifically recommended to and approved by the Commission. To assure that no carrier is unfairly disqualified due to application processing delays caused by waiver requests or other developments, carriers that have been identified as eligible for grants of exclusivity (including 929 MHz PCP applicants who have been recommended for such grants by NABER) would also be allowed to apply for and bid on response channels. Those carriers would be required to offer proof of their eligibility in their licensing applications prior to the auction for the response channels.

As a second or alternate test, all carriers would be eligible to apply for response channels in trading areas that are within 25 miles of the geographic coordinates of any base transmitter licensed by the Commission as of May 10, 1994. The original cut-off date established by the Commission (June 24, 1993) was not appropriate because it failed to address the situation faced by many paging carriers who had expanded their systems since that date either by natural growth or by participation in the 900 MHz exclusivity docket (PR Docket No. 93-35). Extending the period during which facilities can be licensed for purposes of eligibility will more accurately reflect the actual or intended service areas of those parties who should be eligible to apply for response channels. The 25-mile measurement is a practical compromise that limits eligibility to the legitimate service areas of existing carriers. It is the product of a number of considerations including the real-world service area contours established by carriers in a variety of geographic areas and the 20-mile service contours presently recognized for 931 MHz common carrier paging systems.

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David R. Siddall
June 29, 1994
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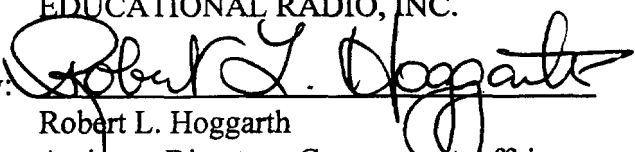
Finally, NABER's Petition expressed concern regarding the two-channel limit on the total number of response channels available per carrier per trading area. NABER agreed that the limitation is valid as a protective measure during the initial auctioning of frequencies to prevent channel hoarding, but was concerned that long-term application of the limitation would create problems in the business marketplace. We discussed a number of options during our meeting including a variety of sunset provisions. After consultation with our membership, NABER now suggests as an alternative that, under certain conditions, carriers not be limited to the number of response channels they can aggregate at any time after the grants of such channels are final (as defined under the Commission's rules). Channel aggregation, however, would be limited to entities who acquire the channels as part of an existing system or to supplement their own existing system. The approval of such aggregation would be conditioned on a careful review by the Commission during which the complete terms of any transaction would be disclosed and closely scrutinized to ensure that no real party in interest rules are violated and that no excessive enrichment takes place. After one year that scrutiny could be relaxed to ease any administrative burdens. Such scrutiny becomes less necessary over time because the longer a license is held the weaker the presumption that its acquisition was for speculative or "greenmail" purposes. Most importantly, regardless of when the aggregation takes place, the acquiring party would be required to demonstrate that it either would have been eligible to bid on the channel itself at the auction, or that it is now eligible to bid for and hold the channel.

With the minor rule modifications suggested in the Petition and clarified herein, the paging industry will be able to apply for, construct and build response systems that will increase the communications options and services available to all citizens and ensure robust competition in the mobile radio marketplace.

Respectfully submitted,

NATIONAL ASSOCIATION OF BUSINESS AND
EDUCATIONAL RADIO, INC.

By:


Robert L. Hoggarth

Assistant Director - Government Affairs

cc: Office of the Secretary
Mr. Tom Mooring
Mr. Fred Thomas